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Attorneys for Plaintiff  
RONALD J. PALMERI

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

RONALD J. PALMERI,

Plaintiff,

vs.

84 LUMBER COMPANY, 84 ASSOCIATES,  
INC., INDIVIDUALLY AND DOING  
BUSINESS AS 84 LUMBER; AND DOES 1  
TO 10, INCLUSIVE,

Defendants.

Case No. 3:06-cv-07033-MJJ

STIPULATION AND ~~[PROPOSED]~~  
ORDER RE: DISMISSAL AND  
ALTERNATIVE DISPUTE  
RESOLUTION

Pursuant to pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure,  
Plaintiff Ronald J. Palmeri ("Plaintiff") and Defendant 84 Lumber Company ("Defendant")  
through their designated counsel hereby stipulate and agree as follows:

1 WHEREAS Plaintiff commenced this action by filing a complaint in Alameda  
2 County Superior Court on or about September 20, 2006.

3 WHEREAS Defendant removed to this court on November 9, 2006.

4 WHEREAS Defendant filed a motion to dismiss the complaint on or about  
5 November 15, 2006, which is scheduled to be heard by the Court on February 23, 2006.

6 WHEREAS the parties have been in settlement negotiations in an attempt to resolve  
7 the disputes at issue in this case.

8 NOW, THEREFORE, IT IS HEREBY STIPULATED that Defendant does and  
9 hereby withdraws its motion to dismiss the complaint.

10 IT IS FURTHER STIPULATED that the above-captioned action be and hereby is  
11 dismissed by Plaintiff in its entirety, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of  
12 Civil Procedure, each party to bear its own costs. The parties agree that the First, Second,  
13 and Third Causes of Action be and hereby are dismissed without prejudice. The parties  
14 further agree that the Fourth and Fifth Causes of Action be and hereby are dismissed with  
15 prejudice.

16 IT IS FURTHER STIPULATED that if the parties have not reached a mutually  
17 agreeable settlement the parties will commence mediation before Hon. Mark Eaton (Ret.)  
18 within sixty (60) days of the entry of this stipulation and order. If the mediation fails to  
19 resolve all disputes, Plaintiff will have sixty (60) days from the date of the mediation to file  
20 a new complaint concerning those factual issues in the complaint not otherwise dismissed  
21 with prejudice. Should Plaintiff elect to file a new lawsuit, Defendant agrees to waive any  
22 statute of limitations defense regarding any currently pled causes of action should they be  
23 raised again in the newly-filed complaint.

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1 Dated: February 13, 2007.

2 PILLSBURY WINTHROP SHAW PITTMAN LLP  
3 JOHN S. POULOS  
4 ANDREW D. BLUTH  
400 Capitol Mall, Suite 1700  
5 Sacramento, CA 95814-4419

6 By /s/ John S. Poulos  
7 Attorneys for Defendants  
8 84 LUMBER COMPANY

9 Dated: February 13, 2007.

10 FLETCHER, HARMS & PALMERI  
11 RICHARD A. HARMS  
433 Callan Avenue, Suite 301  
12 San Leandro, CA 94577

13 By /s/ Richard A. Harms  
14 Attorneys for Plaintiff  
15 RONALD J. PALMERI  
(As Authorized by Counsel on February 13, 2007)

16  
17 ORDER

18 It is so ORDERED.

19  
20 Dated: February <sup>21</sup>, 2007.

21 UNITED STATES DISTRICT JUDGE

